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April 21, 2025

Susan E. Bindler, Clerk of Clerk
Eighth Circuit Court of Appeals
Thomas F. Eagleton Courthouse, Room 24.329
St. Louis, MO 63102

Re: *United States v. Brad Wendt*
Appeal No. 24-2458

Dear Ms. Bindler:

Pursuant to Fed.R.App.P.28(j), the United States supplies the following authorities relevant to the Second Amendment questions raised at oral argument.

The Second Amendment recognizes a right belonging to “the people,” which “unambiguously refers to all members of the political community.” *District of Columbia v. Heller*, 554 U.S. 570, 580 (2008). This plain language does not create unspecified subgroups of “the people”—such as police officers—who enjoy more rights. Notably, respondent Heller was a police officer, *id.* at 575, but his occupation played no role in the Supreme Court’s decision about what arms he could possess while off-duty.

As explained in the Government’s brief (pp. 57-60), the Second Amendment does not protect dangerous and unusual weapons. Instead of recognizing an individual right to possess such weapons, laws permitting police to carry certain arms reflect the power of the sovereign to arm its agents to carry out official acts. And as a power flowing from the sovereign, it follows that the sovereign may limit such power. To this end, early statutes permitting police to go armed with dangerous and unusual weapons limited that power to performance of their official duties. *See* Act of Nov. 27, 1786, Va. Acts ch. 21, (“in executing of their office”); Act of Dec. 25, 1837, § 4, 1837 Ga. Laws 90 (“in actual discharge of their respective duties, but not otherwise”); Act of Apr. 12, 1871, ch. 34, § 1, 1871 Tex. Gen. Laws 25 (“while engaged in the discharge

of their official duties"); Act of Feb. 16, 1875, § 1, 1875 Ark. Acts 156 ("when engaged in the discharge of his official duties").

Section 922(o)(2)(A)'s limited law-enforcement exception fits this historical tradition. A city may authorize its officers to possess machineguns for performance of their official duties. But the city's prerogative to hire a police officer does not instill in that officer an unfettered individual right to possess any weapon, at any time, or for any purpose. Off-duty, non-official possession of dangerous and unusual weapons like machineguns falls under *Heller*'s acknowledgement that "M-16 rifles and the like ... may be banned." 554 U.S. at 627.

Sincerely,

Richard D. Westphal
United States Attorney

By: /s/ Kyle P. Hanson
Kyle P. Hanson
Assistant United States Attorney

**CERTIFICATE OF COMPLIANCE
WITH RULES 27(d)(2)(A), 32(a), and 32(g)**

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Dated: April 21, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ *Janna Colvin*
Paralegal Specialist